

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FirstEnergy Family Credit Union, Inc.,

Plaintiff,

vs.

FirstEnergy Federal Credit Union,

Defendant.

Case No. 5:12-cv-0864

Judge Benita Y. Pearson

**FirstEnergy Family Credit Union, Inc.’s  
Motion to Modify Preliminary Injunction Order**

FirstEnergy Family Credit Union (“FirstEnergy Family”) respectfully moves the Court pursuant to Federal Rule of Civil Procedure 62(c) to modify its November 7, 2012, preliminary injunction order (ECF # 39) to set forth additional findings of fact and conclusions of law in support thereof. While FirstEnergy Family believes that the Court sufficiently supported the preliminary injunction, doing so will resolve a dispute that FirstEnergy Federal Credit Union (“FirstEnergy Federal”) has created before the Sixth Circuit Court of Appeals.

On Friday, November 23, 2012, FirstEnergy Federal filed an “emergency” motion with the Sixth Circuit seeking to stay the preliminary injunction pending appeal. (FirstEnergy Federal’s motion is attached as Exhibit A.) In its motion, FirstEnergy Federal insists the preliminary injunction is deficient because it lacks sufficient findings of fact or conclusions of law, stating:

- “Judge Pearson also indicated in footnote 2 of her November 16, 2012 Order that FirstEnergy Corp. has not intervened in this litigation, which seemed to form some unexplained basis for her decision.” (*Id.* at 3.)

- “Defendant-Appellant moves for a stay from this Court because Judge Pearson’s November 7, 2012 Order is improper *ab initio* in that it does not provide any findings of fact or conclusions of law upon which to substantiate the order.” (*Id.* at 4.)
- “[A] stay is proper given that the District Court has issued an unsubstantiated Order that is likely mooted by the subsequent written license agreements.” (*Id.* at 6.)
- “The November 7, 2012 Order does not contain any discussion of the federal-law grounds for granting the injunction. It does not contain any evidentiary findings concerning the need for immediate relief. And it does not address (other than to identify) the four factors for granting a preliminary injunction.” (*Id.* at 10.)
- “Here, not only are there no written findings of fact or conclusions of law, but also none were made during the hearing, either. Without such information, it is impossible for this Court to assess likelihood of success.” (*Id.*)
- “The District Court’s November 7, 2012 Order does not address any of these factors. Thus, there is no basis to conclude that the District Court’s November 7, 2012 Order will be upheld.” (*Id.* at 12.)
- “To allow the November 7, 2012 Order to stand without any support or explanation undermines the entire fact-finding process associated with consideration of motions for extraordinary relief.” (*Id.* at 15.)

FirstEnergy Family disagrees with FirstEnergy Federal, and it has submitted a detailed brief to the Sixth Circuit setting forth the reasons why, a copy of which is attached as Exhibit B.

Nonetheless, FirstEnergy Family respectfully asks the Court to modify its preliminary injunction order to state the specific findings of fact and conclusions of law that underlie the findings and conclusions that appear in the text of that order. Although unnecessary, setting forth that additional detail will avoid needless procedural wrangling before the Sixth Circuit regarding the sufficiency of the order

and allow the parties and both this Court and the Sixth Circuit to focus their efforts on the substantive issues of this case. Upon request, FirstEnergy Family will provide proposed findings and conclusions for the Court's consideration.

For the foregoing reasons, the Court should grant this motion.

Respectfully submitted,

Dated: November 27, 2012

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**Certificate of Service**

I hereby certify that on November 27, 2012, a copy of the foregoing ***Motion to Modify Preliminary Injunction Order*** was electronically served using the Court's Electronic Case Filing (ECF) system and the parties have been served by electronic notice through the Court's ECF system.

/s/ David T. Movius  
*One of the Attorneys for*  
*FirstEnergy Family Credit Union*